

## Calendar No. 436

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 1768****[Report No. 107-171]**

To authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program.

---

## IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2001

Mrs. FEINSTEIN (for herself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JUNE 24, 2002

Reported by Mr. BINGAMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

**A BILL**

To authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Calfed Bay-Delta Au-  
5 thorization Act”.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act:

3 (1) ~~CALFED BAY-DELTA PROGRAM.~~—The term  
4 “~~Calfed Bay-Delta Program~~” means the programs,  
5 projects, complementary actions, and activities un-  
6 dertaken through coordinated planning, implementa-  
7 tion, and assessment activities of the State and Fed-  
8 eral agencies in a manner consistent with the Record  
9 of Decision.

10 (2) ~~CALFED POLICY GROUP.~~—The term “~~Calfed~~  
11 ~~Policy Group~~” means a committee of State and Fed-  
12 eral agencies established in the Record of Decision  
13 to oversee the ~~Calfed Bay-Delta Program~~, or the ap-  
14 propriate successor entity created as part of any per-  
15 manent governing structure pursuant to section  
16 4(d).

17 (3) ~~ENVIRONMENTAL WATER ACCOUNT.~~—The  
18 term “~~Environmental Water Account~~” means the re-  
19 serve of water provided for in the Record of Decision  
20 to provide water, in addition to the amount of the  
21 regulatory baseline, to protect and restore Delta  
22 fisheries.

23 (4) ~~FEDERAL AGENCIES.~~—The term “~~Federal~~  
24 ~~agencies~~” means the following:

25 (A) The Department of the Interior (in-  
26 cluding the Bureau of Reclamation, Fish and

Wildlife Service, Bureau of Land Management,  
and United States Geological Survey);

(B) The Environmental Protection Agency;

(C) The Army Corps of Engineers;

(D) The Department of Commerce (including the National Marine Fisheries Service);

(E) The Department of Agriculture (including the Natural Resources Conservation Service and the Forest Service); and

(F) The Western Area Power Administration.

(5) GOVERNOR.—The term “Governor” means the Governor of the State of California.

(6) IMPLEMENTATION MEMORANDUM.—The term “Implementation Memorandum” means the Calfed Bay-Delta Program Implementation Memorandum of Understanding dated August 28, 2000, executed by the Federal agencies and the State agencies.

(7) RECORD OF DECISION.—The term “Record of Decision” means the Federal programmatic Record of Decision dated August 28, 2000, issued by the Calfed Federal agencies and supported by the State.

1           (8) SECRETARY.—The term “Secretary” means  
2           the Secretary of the Interior.

3           (9) STAGE 1.—The term “Stage 1” means the  
4           programs and projects planned for the first 7 years  
5           of the Calfed Bay-Delta Program, as specified in the  
6           Record of Decision.

7           (10) STATE.—The term “State” means the  
8           State of California.

9           (11) STATE AGENCIES.—The term “State agen-  
10          cies” means the following:

11                   (A) The Resources Agency of California  
12                   (including the Department of Water Resources  
13                   and the Department of Fish and Game);

14                   (B) The California Environmental Protec-  
15                   tion Agency (including the State Water Re-  
16                   sources Control Board); and

17                   (C) The California Department of Food  
18                   and Agriculture.

19   **SEC. 3. BAY-DELTA PROGRAM.**

20           (a) IN GENERAL.—The Record of Decision is ap-  
21           proved as a framework for addressing Calfed Bay-Delta  
22           Program components consisting of water storage, eco-  
23           system restoration, water supply reliability, conveyance,  
24           water use efficiency, water quality, water transfers, water-  
25           sheds, Environmental Water Account, levee stability, gov-

ernance, and science. The Secretary, working with the Federal agency heads, as appropriate, shall undertake actions pursuant to the Record of Decision, subject to the provisions of this Act, so that the program goals consisting of: protecting drinking water quality; restoring ecological health; improving water supply reliability, including water storage and conveyance; and protecting Delta levees; will progress in a balanced manner.

(b) **AUTHORIZED ACTIONS.**—The Secretary is authorized to take such actions, subject to the provisions of this Act, as may be necessary to implement Stage 1 of the Record of Decision if the activity has been subject to environmental review and approval as required under applicable Federal and State law (including regulations); and has been certified by the Calfed Policy Group to be consistent with the Record of Decision.

(c) **CONSTRUCTION AND ACQUISITION.**—Any project with the Federal share of construction costs in excess of \$10 million to be constructed as part of the Calfed Bay-Delta Program, including an enlarged Los Vaqueros Reservoir, an enlarged Shasta Dam, and in-Delta storage; and any acquisition in which the total Federal share is in excess of \$10 million for land or for assets for the Environmental Water Account as part of the Calfed Bay-Delta

1 Program, shall require specific authorization by an Act of  
 2 Congress, in accordance with section 6.

3 **SEC. 4. MANAGEMENT.**

4 (a) COORDINATION.—In carrying out the Calfed Bay-  
 5 Delta Program, the Federal agencies shall coordinate their  
 6 activities with the stage agencies.

7 (b) PUBLIC PARTICIPATION.—In carrying out the  
 8 Calfed Bay-Delta Program, the Federal agencies shall co-  
 9 operate with local and tribal governments and the public  
 10 through a federally chartered advisory committee or other  
 11 appropriate means, to seek input on program elements  
 12 such as planning, design, technical assistance, and devel-  
 13 opment of peer review science programs.

14 (c) SCIENCE.—In carrying out the Calfed Bay-Delta  
 15 Program, the Federal agencies shall seek to ensure, to the  
 16 maximum extent practicable, that—

17 (1) all major aspects of implementing the Pro-  
 18 gram are subjected to credible and objective sci-  
 19 entific review; and

20 (2) major decisions are based upon the best  
 21 available scientific information.

22 (d) GOVERNANCE.—In carrying out the Calfed Bay-  
 23 Delta Program, the Secretary and the Federal agency  
 24 heads shall undertake their activities in accordance with  
 25 the terms of the Implementation Memorandum until such

1 time as the Implementation Memorandum is replaced by  
 2 approval of a permanent governing structure, whereupon  
 3 the Secretary and agency heads shall undertake their ac-  
 4 tivities in accordance with the permanent governing struc-  
 5 ture. The Secretary and the Federal agency heads shall  
 6 work with their State counterparts to develop a permanent  
 7 governing structure and shall seek authorization and ap-  
 8 proval of the permanent governing structure, as necessary.

9 **SEC. 5. REPORTING REQUIREMENTS.**

10 (a) **REPORT AND CERTIFICATION BY CALFED.**—The  
 11 Secretary, in cooperation with the Governor, shall submit  
 12 a report of the Calfed Policy Group by December 15 of  
 13 each year to the appropriate authorizing and appro-  
 14 priating Committees of the Senate and the House of Rep-  
 15 resentatives that describes the status of implementation  
 16 of all components of the Calfed Bay-Delta Program and  
 17 that certifies that the Calfed Bay-Delta Program is pro-  
 18 gressing in a balanced manner with respect to all program  
 19 components, including water supply, ecosystem restora-  
 20 tion, and water quality. The Secretary's report shall  
 21 describe—

22 (1) the progress of the Calfed Bay-Delta Pro-  
 23 gram in meeting the implementation schedule for the  
 24 Program in a manner consistent with the Record of  
 25 Decision;

1           (2) the status of implementation of all compo-  
2           nents of the Calfed Bay-Delta Program;

3           (3) expenditures in the past fiscal year and year  
4           to date for implementing the Calfed Bay-Delta Pro-  
5           gram; and

6           (4) accomplishments in the past fiscal year and  
7           year to date in achieving the objectives of  
8           improved—

9                   (A) water storage;

10                   (B) water quality;

11                   (C) water use efficiency;

12                   (D) ecosystem restoration;

13                   (E) watershed management;

14                   (F) levee system integrity;

15                   (G) water transfers;

16                   (H) water conveyances; and

17                   (I) water supply reliability.

18 The report shall discuss the status of Calfed Bay-Delta  
19 Program goals, current schedules, and relevant financing  
20 agreements. Each of the above-listed categories must be  
21 considered in determining whether the Program is pro-  
22 ceeding in a balanced manner.

23           (b) REVISED SCHEDULE.—If the report provided for  
24 in subsection (a) concludes that the Calfed Bay-Delta Pro-  
25 gram is not progressing in a balanced manner so that no



1 certification of balanced implementation can be made, the  
 2 Calfed Policy Group shall prepare a revised schedule and  
 3 such other modifications, to ensure the Calfed Bay-Delta  
 4 Program will progress in a balanced manner consistent  
 5 with the intent of the Record of Decision. This revised  
 6 schedule is subject to approval by the Secretary and the  
 7 Governor and shall be submitted to the appropriate au-  
 8 thorizing and appropriating Committees of the Senate and  
 9 the House of Representatives.

10 (c) FINANCIAL SUMMARY.—In addition to the report  
 11 required pursuant to subsection (a), no later than Feb-  
 12 ruary 15 of each year the Secretary shall submit to the  
 13 appropriate authorizing and appropriating committees of  
 14 the Senate and the House of Representatives a financial  
 15 report containing a detailed accounting of all funds re-  
 16 ceived by Federal and State agencies for implementing the  
 17 Plan in the previous fiscal year budget and a budget for  
 18 the proposed projects to be carried out in the upcoming  
 19 fiscal year with the Federal portion of funds authorized  
 20 under this Act.

21 (d) CROSSCUT BUDGET REPORTS.—Not later than  
 22 February 15, 2003, and annually thereafter through Feb-  
 23 ruary 15, 2008, the Director of the Office of Management  
 24 and Budget shall submit to the appropriate authorizing  
 25 and appropriating committees of the Senate and the

1 House of Representatives an inter-agency budget crosscut  
2 report that—

3           (1) displays the proposed Federal spending, for  
4           the fiscal year in which the report is submitted and  
5           for each subsequent fiscal year through 2007, on im-  
6           plementation of the Calfed Bay-Delta Program; and

7           (2) identifies all expenditures to date within the  
8           Federal and State governments used to achieve the  
9           objectives of the Calfed Bay-Delta Program.

10 **SEC. 6. AUTHORIZATION REQUIREMENTS FOR CERTAIN**  
11 **CONSTRUCTION AND ACQUISITION ACTIVI-**  
12 **TIES.**

13           (a) **CONSTRUCTION AND ACQUISITION ACTIVITIES.—**  
14 The process for authorizing appropriations to pay the  
15 Federal share of the costs of acquisition of land and assets  
16 for the Environmental Water Account as part of the  
17 Calfed Bay-Delta Program, where such share exceeds \$10  
18 million, and the process for authorizing the construction  
19 of projects as part of the Calfed Bay-Delta Program,  
20 where the Federal share of such costs exceeds \$10 million,  
21 shall be as follows:

22           (1) **REPORT.—**Every odd-numbered year after  
23           the date of enactment of this Act, at the same time  
24           the Secretary submits the report described in section  
25           5(a), the Calfed Policy Group, acting through the

1 Secretary, shall submit to the appropriate author-  
2 izing and appropriating Committees a report cov-  
3 ering the next two fiscal years setting forth the list  
4 of projects and other actions that are proposed for  
5 construction or acquisition and a listing of proposed  
6 acquisition for the Environmental Water Account, as  
7 described in section 6(a). The Calfed Policy Group  
8 and the Secretary shall certify that implementation  
9 of the Calfed Bay-Delta Program in the manner set  
10 forth in the report will result in balanced implemen-  
11 tation in all Calfed Bay-Delta Program areas.

12 (2) AUTHORIZATION REQUIRED.—No amounts  
13 may be appropriated for any fiscal year for any  
14 project or acquisition in which the total federal  
15 share is in excess of \$10 million for construction,  
16 land acquisition, or acquisition of assets for the En-  
17 vironmental Water Account, unless the project or ac-  
18 quisition has been specifically authorized by law.

19 (3) INTENT OF CONGRESS.—It is the intent of  
20 Congress that the authorizations and appropriations  
21 for implementation of the Calfed Bay-Delta Program  
22 shall promote and carry out the fundamental prin-  
23 ciple that the Calfed Bay-Delta Program compo-  
24 nents, consisting of water storage, ecosystem res-  
25 toration, water supply reliability, conveyance, water

1 use efficiency, water quality, water transfers, water-  
 2 sheds, Environmental Water Account, levee stability,  
 3 governance, and science, must progress together in  
 4 a balanced manner.

5 (4) FAILURE TO AUTHORIZE OR FUND.—If the  
 6 Congress, through the authorization and appropria-  
 7 tion process amends, or fails to authorize or fund,  
 8 the projects or acquisitions included in a report sub-  
 9 mitted pursuant to subsection (a)(1), the Secretary  
 10 shall, in consultation with the Calfed Policy Group,  
 11 redetermine whether implementation of the projects  
 12 and acquisitions, as authorized or funded, respec-  
 13 tively, by the Congress will maintain balanced imple-  
 14 mentation in all Calfed Bay-Delta Program areas. If  
 15 the Secretary finds that implementation of such  
 16 projects or acquisitions, as so authorized or funded  
 17 by the Congress, will not maintain balanced imple-  
 18 mentation in all Program areas, the Secretary shall  
 19 report to the Congress the finding as part of the re-  
 20 port required under section 5(a) and recommend  
 21 those steps needed to restore balance to the imple-  
 22 mentation process, as part of the revised schedule  
 23 required under section 5(b).

24 (b) RECOMMENDATIONS AND REPORTS.—

1           (1) RECOMMENDATIONS REGARDING SPECIFIC  
2       ACTIONS.—The Calfed Policy Group, through the  
3       Secretary, shall include in the report under sub-  
4       section (a) of this section recommendations with re-  
5       spect to construction projects (including for surface  
6       storage and groundwater storage) that would im-  
7       prove water supply reliability and water quality and  
8       recommendations with respect to acquisition of land  
9       and assets for the Environmental Water Account  
10      that would achieve Program goals.

11          (2) REPORTS ON CONSTRUCTION PROJECTS.—  
12      With respect to construction projects with the Fed-  
13      eral share of costs in excess of \$10 million, the Sec-  
14      retary, acting in cooperation with the Governor,  
15      shall transmit to the appropriate authorizing and  
16      appropriating committees of the Senate and the  
17      House of Representatives the reports of the Calfed  
18      Policy Group regarding such construction projects in  
19      accordance with the time frames set forth in the  
20      Record of Decision or such other time frames as  
21      may be approved by the Calfed Policy Group. Such  
22      reports shall include—

23           (A) a project description;

1           ~~(B)~~ feasibility and operational studies com-  
2           pleted by the Secretary or the Governor, as ap-  
3           propriate;

4           ~~(C)~~ environmental impact statements or re-  
5           ports;

6           ~~(D)~~ a finding of consistency with the  
7           record of decision as determined by the CalFed  
8           Policy Group;

9           ~~(E)~~ findings of the Independent Science  
10          Panel relative to the consistency of the CalFed  
11          Bay-Delta Program goals;

12          ~~(F)~~ cost-benefit analysis;

13          ~~(G)~~ a plan for fulfilling mitigation require-  
14          ments;

15          ~~(H)~~ identification of project benefits and  
16          beneficiaries;

17          ~~(I)~~ cost allocation plan consistent with the  
18          beneficiaries pay provisions of the Record of  
19          Decision;

20          ~~(J)~~ financing and repayment plans based  
21          upon commitments by beneficiaries that they  
22          are willing and able to pay their allocated  
23          share;

24          ~~(K)~~ progress in the acquisition of the Fed-  
25          eral and State permits including permits under

1           section 404(a) of the Federal Water Pollution  
 2           Control Act (33 U.S.C. 1344) for implementa-  
 3           tion of projects in all identified program areas;  
 4           and

5           (L) a recommendation, based on the re-  
 6           sults of items (A) through (K) above, on wheth-  
 7           er to proceed with the project.

8   **SEC. 7. ENVIRONMENTAL JUSTICE.**

9           It is the intent of the Congress that—

10          (1) implementation of the Calfed Program by  
 11          the Federal agencies and State agencies should ful-  
 12          fill the commitment to addressing environmental jus-  
 13          tice challenges referred to in the Calfed Bay Delta  
 14          Program Environmental Justice Workplan dated  
 15          December 13, 2000;

16          (2) the Federal agencies and State agencies  
 17          should continue to collaborate to develop a com-  
 18          prehensive environmental justice workplan for the  
 19          Calfed program, including through continuation of  
 20          the functions of the Calfed Bay-Delta Environmental  
 21          Justice Workgroup; and

22          (3) the Calfed Policy Group should collaborate  
 23          with such workgroup to ensure fulfillment of the  
 24          commitment referred to in paragraph (a).

1 **SEC. 8. GRANTS TO FEDERAL AGENCIES.**

2       The Secretary is authorized to make grants to the  
3 Federal agencies assuming responsibility for the imple-  
4 mentation of components of the Calfed Bay-Delta Pro-  
5 gram pursuant to the Record of Decision. Such grants  
6 shall be made pursuant to interagency agreements to be  
7 entered into between the Secretary and the Federal agen-  
8 cies.

9 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

10       There are authorized to be appropriated to the De-  
11 partment of the Interior \$2,402,000,000 to pay the Fed-  
12 eral share of carrying out Stage 1 of the Record of Deci-  
13 sion for fiscal years 2003 through 2007, in accordance  
14 with the provisions of this Act. The funds shall remain  
15 available without fiscal year limitation.

16 **SEC. 10. COMPLIANCE WITH STATE AND FEDERAL LAW.**

17       Nothing in this Act preempts or otherwise affects any  
18 Federal or State law.

19 **SECTION 1. SHORT TITLE.**

20       *This Act may be cited as the “Calfed Bay-Delta Au-*  
21 *thorization Act”.*

22 **SEC. 2. DEFINITIONS.**

23       *For purposes of this Act:*

24           (1) *CALFED BAY-DELTA PROGRAM.*—*The term*  
25       *“Calfed Bay-Delta Program” means the programs,*  
26       *projects, complementary actions, and activities under-*



1       *taken through coordinated planning, implementation,*  
 2       *and assessment activities of the State and Federal*  
 3       *agencies in a manner consistent with the Record of*  
 4       *Decision.*

5               (2) *CALFED POLICY GROUP.*—*The term “Calfed*  
 6       *Policy Group” means a committee of State and Fed-*  
 7       *eral agencies referenced in the Record of Decision and*  
 8       *established to oversee the Calfed Bay-Delta Program,*  
 9       *or the appropriate successor entity created as part of*  
 10       *any permanent governing structure pursuant to sec-*  
 11       *tion 4(d).*

12              (3) *ENVIRONMENTAL WATER ACCOUNT.*—*The*  
 13       *term “Environmental Water Account” means the re-*  
 14       *serve of water provided for in the Record of Decision*  
 15       *to provide water, in addition to the amount of the*  
 16       *regulatory baseline, to protect and restore Delta fish-*  
 17       *eries.*

18              (4) *FEDERAL AGENCIES.*—*The term “Federal*  
 19       *agencies” means the following—*

20                       (A) *the Department of the Interior (includ-*  
 21                       *ing the Bureau of Reclamation, Fish and Wild-*  
 22                       *life Service, Bureau of Land Management, and*  
 23                       *United States Geological Survey);*

24                       (B) *the Environmental Protection Agency;*

25                       (C) *the Army Corps of Engineers;*

1                   (D) the Department of Commerce (including  
2                   the National Marine Fisheries Service);

3                   (E) the Department of Agriculture (includ-  
4                   ing the Natural Resources Conservation Service  
5                   and the Forest Service); and

6                   (F) the Western Area Power Administra-  
7                   tion.

8                   (5) GOVERNOR.—The term “Governor” means  
9                   the Governor of the State of California.

10                  (6) IMPLEMENTATION MEMORANDUM.—The term  
11                  “Implementation Memorandum” means the Calfed  
12                  Bay-Delta Program Implementation Memorandum of  
13                  Understanding dated August 28, 2000, executed by  
14                  the Federal agencies and the State agencies.

15                  (7) RECORD OF DECISION.—The term “Record of  
16                  Decision” means the Federal programmatic Record of  
17                  Decision dated August 28, 2000, issued by the Federal  
18                  agencies and supported by the State.

19                  (8) SECRETARY.—The term “Secretary” means  
20                  the Secretary of the Interior.

21                  (9) STAGE 1.—The term “Stage 1” means the  
22                  programs and projects planned for the first 7 years  
23                  of the Calfed Bay-Delta Program, as specified in the  
24                  Record of Decision.

1           (10) *STATE*.—*The term “State” means the State*  
 2           *of California.*

3           (11) *STATE AGENCIES*.—*The term “State Agen-*  
 4           *cies” means the following—*

5                   (A) *the Resources Agency of California (in-*  
 6                   *cluding the Department of Water Resources and*  
 7                   *the Department of Fish and Game);*

8                   (B) *the California Environmental Protec-*  
 9                   *tion Agency (including the State Water Re-*  
 10                   *sources Control Board); and*

11                   (C) *the California Department of Food and*  
 12                   *Agriculture.*

13 **SEC. 3. BAY DELTA PROGRAM.**

14           (a) *IN GENERAL*.—*The Record of Decision is approved*  
 15           *as a framework for addressing Calfed Bay-Delta Program*  
 16           *components consisting of water storage, ecosystem restora-*  
 17           *tion, water supply reliability, conveyance, water use effi-*  
 18           *ciency, water quality, water transfers, watersheds, Environ-*  
 19           *mental Water Account, levee stability, governance, and*  
 20           *science. The Secretary and the heads of the Federal agencies*  
 21           *are authorized to carry out the activities in the Record of*  
 22           *Decision, subject to the provisions of this Act, so that the*  
 23           *program goals consisting of protecting drinking water qual-*  
 24           *ity; restoring ecological health; improving water supply re-*  
 25           *liability, including additional water storage and convey-*

1 *ance; and protecting Delta levees; will progress in a bal-*  
 2 *anced manner.*

3 *(b) AUTHORIZED ACTIVITIES.—*

4 *(1) SPECIFIC ACTIVITIES AUTHORIZED.—The*  
 5 *Secretary and the heads of the Federal agencies are*  
 6 *authorized to undertake the activities described in this*  
 7 *subsection in furtherance of Stage 1 of the Calfed*  
 8 *Bay-Delta Program as set forth in the Record of Deci-*  
 9 *sion, subject to the provisions of this Act, if the activ-*  
 10 *ity has been subject to environmental review and ap-*  
 11 *proval as required under applicable Federal and*  
 12 *State law, and has been approved and certified by the*  
 13 *Calfed Policy Group to be consistent with the Record*  
 14 *of Decision.*

15 *(A) WATER STORAGE.—Of the amounts au-*  
 16 *thorized to be appropriated for fiscal years 2003*  
 17 *through 2005 under this Act, no more than*  
 18 *\$200,000,000 may be expended for the*  
 19 *following—*

20 *(i) planning activities and feasibility*  
 21 *studies for the following projects to be pur-*  
 22 *sued with project-specific study—*

23 *(I) enlargement of Shasta Dam in*  
 24 *Shasta County;*

1                   (ii) enlargement of Los Vaqueros  
 2                   Reservoir in Contra Costa County; and  
 3                   (III) in-Delta storage in San Joa-  
 4                   quin and Contra Costa Counties;  
 5                   (ii) planning and feasibility studies for  
 6                   the following projects requiring further  
 7                   consideration—

8                   (I) Sites Reservoir in Colusa  
 9                   County; and  
 10                  (II) Upper San Joaquin River  
 11                  storage in Fresno and Madera Coun-  
 12                  ties;  
 13                  (iii) developing and implementing  
 14                  groundwater management and groundwater  
 15                  storage projects; and  
 16                  (iv) comprehensive water management  
 17                  planning.

18                  (B) CONVEYANCE.—Of the amounts author-  
 19                  ized to be appropriated for fiscal years 2003  
 20                  through 2005 under this Act, no more than  
 21                  \$125,000,000 may be expended for the following:

22                  (i) South Delta Actions—  
 23                  (I) South Delta Improvements  
 24                  Program to—

- 1                   (aa) increase the State Water  
2                   Project export limit to 8500 cfs;  
3                   (bb) install permanent, oper-  
4                   able barriers in the south Delta;  
5                   (cc) design and construct fish  
6                   screens and intake facilities at  
7                   Clifton Court Forebay and the  
8                   Tracy Pumping Plant facilities;  
9                   and  
10                  (dd) increase the State Water  
11                  Project export to the maximum  
12                  capability of 10,300 cfs;  
13                  (II) reduction of agricultural  
14                  drainage in south Delta channels; and  
15                  (III) design and construction of  
16                  lower San Joaquin River floodway im-  
17                  provements.  
18                  (ii) North Delta Actions—  
19                       (I) evaluation and implementa-  
20                       tion of improved operational proce-  
21                       dures for the Delta Cross Channel to  
22                       address fishery and water quality con-  
23                       cerns;

1                   (II) *evaluation of a screened*  
 2                   *through-Delta facility on the Sac-*  
 3                   *ramento River; and*

4                   (III) *design and construction of*  
 5                   *lower Mokelumne River floodway im-*  
 6                   *provements.*

7                   (iii) *Interties—*

8                   (I) *evaluation and construction of*  
 9                   *an intertie between the State Water*  
 10                  *Project and the Central Valley Project*  
 11                  *facilities at or near the City of Tracy;*  
 12                  *and*

13                  (II) *assessment of the connection*  
 14                  *of the Central Valley Project to the*  
 15                  *State Water Project's Clifton Court*  
 16                  *Forebay with a corresponding increase*  
 17                  *in the Forebay's screened intake.*

18                  (iv)           *Other            infrastructure*  
 19                  *improvements—*

20                  (I) *evaluation and implementa-*  
 21                  *tion of the San Luis Reservoir*  
 22                  *lowpoint improvement project;*

23                  (II) *installation and operation of*  
 24                  *temporary barriers in the south Delta*

1                    *until fully operable barriers are con-*  
 2                    *structed;*

3                    *(III) actions to protect navigation*  
 4                    *and local diversions not adequately*  
 5                    *protected by the temporary barriers;*

6                    *(IV) facilitation of water quality*  
 7                    *exchanges and similar programs to*  
 8                    *make high quality Sierra Nevada*  
 9                    *water in the eastern San Joaquin Val-*  
 10                    *ley available to urban southern Cali-*  
 11                    *fornia interests; and*

12                    *(V) the Sacramento-San Joaquin*  
 13                    *Comprehensive Study.*

14                    *(c) WATER USE EFFICIENCY.—Of the*  
 15                    *amounts authorized to be appropriated for fiscal*  
 16                    *years 2003 through 2005 under this Act, no more*  
 17                    *than \$295,000,000 may be expended for the*  
 18                    *following—*

19                    *(i) water conservation projects that*  
 20                    *provide water supply reliability, water*  
 21                    *quality, and ecosystem benefits to the Bay-*  
 22                    *Delta system;*

23                    *(ii) technical assistance for urban and*  
 24                    *agricultural water conservation projects;*



1                   (iii) water recycling and desalination  
2                   projects, including projects identified in the  
3                   *Bay Area Water Recycling Plan* and the  
4                   *Southern California Comprehensive Water*  
5                   *Reclamation and Reuse Study*;

6                   (iv) water measurement and transfer  
7                   incentive actions; and

8                   (v) certification and implementation of  
9                   best management practices for urban water  
10                  conservation.

11               (D) *WATER TRANSFERS*.—Of the amounts  
12               authorized to be appropriated for fiscal years  
13               2003 through 2005 under this Act, no more than  
14               \$5,000,000 may be expended for the following—

15                   (i) increasing the availability of exist-  
16                   ing facilities for water transfers;

17                   (ii) lowering transaction costs through  
18                   permit streamlining; and

19                   (iii) maintaining a water transfer in-  
20                   formation clearinghouse.

21               (E) *ENVIRONMENTAL WATER ACCOUNT*.—Of  
22               the amounts authorized to be appropriated for  
23               fiscal years 2003 through 2005 under this Act,  
24               no more than \$100,000,000 may be expended for

1       *implementation of the Environmental Water Ac-*  
2       *count.*

3               (F) *INTEGRATED REGIONAL WATER MAN-*  
4       *AGEMENT PLANS.—Of the amounts authorized to*  
5       *be appropriated for fiscal years 2003 through*  
6       *2005 under this Act, no more than \$250,000,000*  
7       *may be expended for the following—*

8               (i) *establishing a competitive grants*  
9       *program to assist local and regional com-*  
10       *munities in California in developing and*  
11       *implementing integrated regional water*  
12       *management plans to carry out Stage 1 of*  
13       *the Record of Decision; and*

14              (ii) *implementation of projects and*  
15       *programs in California that improve water*  
16       *supply reliability, water quality, ecosystem*  
17       *restoration, and flood protection, or meet*  
18       *other local and regional needs, that are con-*  
19       *sistent with, and make a significant con-*  
20       *tribution to, Stage 1 of the Calfed Bay-*  
21       *Delta Program.*

22              (G) *ECOSYSTEM RESTORATION.—Of the*  
23       *amounts authorized to be appropriated for fiscal*  
24       *years 2003 through 2005 under this Act, no more*

1           *than \$225,000,000 may be expended for the*  
2           *following—*

3                     *(i) implementation of large-scale res-*  
4                     *toration projects in San Francisco Bay, the*  
5                     *Delta, and its tributaries;*

6                     *(ii) restoration of habitat in the Delta,*  
7                     *San Pablo Bay, and Suisun Bay and*  
8                     *Marsh, including tidal wetlands and ripar-*  
9                     *ian habitat;*

10                    *(iii) fish screen and fish passage im-*  
11                    *provement projects;*

12                    *(iv) implementation of an invasive*  
13                    *species program, including prevention, con-*  
14                    *trol, and eradication;*

15                    *(v) development and integration of*  
16                    *State and Federal agricultural programs*  
17                    *that benefit wildlife into the Ecosystem Res-*  
18                    *toration Program;*

19                    *(vi) financial and technical support for*  
20                    *locally-based collaborative programs to re-*  
21                    *store habitat while addressing the concerns*  
22                    *of local communities;*

23                    *(vii) water quality improvement*  
24                    *projects to reduce salinity, selenium, mer-*  
25                    *cury, pesticides, trace metals, dissolved oxy-*

1           *gen, turbidity, sediment, and other pollut-*  
 2           *ants;*

3           *(viii) environmental water acquisitions*  
 4           *to improve fish spawning and survival in*  
 5           *the Delta and its tributaries;*

6           *(ix) integrated flood management, eco-*  
 7           *system restoration, and levee protection*  
 8           *projects;*

9           *(x) scientific evaluations and targeted*  
 10          *research on program activities; and*

11          *(xi) strategic planning and tracking of*  
 12          *program performance.*

13          *(H) WATERSHEDS.—Of the amounts au-*  
 14          *thorized to be appropriated for fiscal years 2003*  
 15          *through 2005 under this Act, no more than*  
 16          *\$75,000,000 may be expended for the following—*

17           *(i) building local capacity to assess*  
 18           *and manage watersheds affecting the Bay-*  
 19           *Delta system;*

20           *(ii) technical assistance for watershed*  
 21           *assessments and management plans; and*

22           *(iii) developing and implementing lo-*  
 23           *cally-based watershed conservation, mainte-*  
 24           *nance, and restoration actions.*

1           (I) *WATER QUALITY.*—Of the amounts au-  
2           thorized to be appropriated for fiscal years 2003  
3           through 2005 under this Act, no more than  
4           \$125,000,000 may be expended for the  
5           following—

6                   (i) *addressing drainage problems in*  
7                   *the San Joaquin Valley to improve down-*  
8                   *stream water quality;*

9                   (ii) *implementation of source control*  
10                  *programs in the Delta and its tributaries;*

11                  (iii) *developing recommendations*  
12                  *through scientific panels and advisory coun-*  
13                  *cil processes to meet Calfed's goal of contin-*  
14                  *uous improvement in Delta water quality*  
15                  *for all uses;*

16                  (iv) *investing in treatment technology*  
17                  *demonstration projects;*

18                  (v) *controlling runoff into the Cali-*  
19                  *fornia aqueduct and other similar convey-*  
20                  *ances;*

21                  (vi) *addressing water quality problems*  
22                  *at the North Bay Aqueduct;*

23                  (vii) *studying recirculation of export*  
24                  *water to reduce salinity and improve dis-*  
25                  *solved oxygen in the San Joaquin River;*

(viii) implementation of projects to enable San Francisco Bay Area water districts to work cooperatively to address water quality and supply reliability issues, including connections between aqueducts, water transfers, and infrastructure improvements that encourage regional approaches, including potential alternatives related to East Bay Municipal Utility District's contract with the Bureau of Reclamation dated July 20, 2001, that would improve water quality and water supply reliability in San Francisco Bay and Sacramento County Regions;

(ix) development of water quality exchanges and other programs to make high quality water available to urban areas; and

(x) development and implementation of a plan to meet all existing water quality standards for which the State and Federal water projects have responsibility.

(J) *LEVEE STABILITY*.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than

1           \$100,000,000 may be expended for the  
2           following—

3                   (i) assisting local reclamation districts  
4                   in reconstructing Delta levees to a base level  
5                   of protection;

6                   (ii) enhancing the stability of levees  
7                   that have particular importance in the sys-  
8                   tem through the Delta Levee Special Im-  
9                   provement Projects program;

10                  (iii) developing best management prac-  
11                  tices to control and reverse land subsidence  
12                  on Delta islands;

13                  (iv) refining the Delta Emergency  
14                  Management Plan;

15                  (v) developing a Delta Risk Manage-  
16                  ment Strategy after assessing the con-  
17                  sequences of Delta levee failure from floods,  
18                  seepage, subsidence, and earthquakes;

19                  (vi) developing a strategy for reuse of  
20                  dredged materials on Delta islands; and

21                  (vii) evaluating, and where appro-  
22                  priate rehabilitating, the Suisun Marsh lev-  
23                  ees.

24                  (K) SCIENCE.—Of the amounts authorized  
25                  to be appropriated for fiscal years 2003 through

1       2005 under this Act, no more than \$100,000,000  
2       may be expended for the following—

3               (i) establishing and maintaining an  
4               independent science board, technical panels,  
5               and standing boards to provide oversight  
6               and peer review of the program;

7               (ii) conducting expert evaluations and  
8               scientific assessments of all program ele-  
9               ments;

10              (iii) coordinating existing monitoring  
11              and scientific research programs;

12              (iv) developing and implementing  
13              adaptive management experiments to test,  
14              refine and improve scientific under-  
15              standings;

16              (v) establishing performance measures,  
17              and monitoring and evaluating the per-  
18              formance of all program elements; and

19              (vi) preparing an annual Science Re-  
20              port.

21              (L) PROGRAM MANAGEMENT, OVERSIGHT,  
22              AND COORDINATION.—Of the amounts authorized  
23              to be appropriated for fiscal years 2003 through  
24              2005 under this Act, no more than \$30,000,000  
25              may be expended for the following—



1                   (i) *program-wide tracking of schedules,*  
2                   *finances, and performance;*

3                   (ii) *multi-agency oversight and coordi-*  
4                   *nation of Calfed activities to ensure pro-*  
5                   *gram balance and integration;*

6                   (iii) *development of interagency cross-*  
7                   *cut budgets and a comprehensive finance*  
8                   *plan to allocate costs in accordance with the*  
9                   *beneficiary pays provisions of the Record of*  
10                  *Decision;*

11                  (iv) *coordination of public outreach*  
12                  *and involvement, including tribal, environ-*  
13                  *mental justice, and public advisory activi-*  
14                  *ties under the Federal Advisory Committee*  
15                  *Act; and*

16                  (v) *development of Annual Reports.*

17                  (2) *AUTHORIZED ACTIONS.—The Secretary and*  
18                  *the Federal agency heads are authorized to carry out*  
19                  *the activities authorized by this Act through the use*  
20                  *of grants, loans, contracts, and cooperative agree-*  
21                  *ments with federal and non-federal entities where the*  
22                  *Secretary or Federal agency head determines that the*  
23                  *grant, loan, contract, or cooperative agreement will*  
24                  *assist in implementing the authorized activity in an*  
25                  *efficient, timely, and cost-effective manner.*

1 **SEC. 4. MANAGEMENT.**

2       (a) *COORDINATION.*—*In carrying out the Calfed Bay-*  
3 *Delta Program, the Federal agencies shall coordinate their*  
4 *activities with the State agencies.*

5       (b) *PUBLIC PARTICIPATION.*—*In carrying out the*  
6 *Calfed Bay-Delta Program, the Federal agencies shall co-*  
7 *operate with local and tribal governments and the public*  
8 *through a federally chartered advisory committee or other*  
9 *appropriate means, to seek input on program elements such*  
10 *as planning, design, technical assistance, and development*  
11 *of peer review science programs.*

12       (c) *SCIENCE.*—*In carrying out the Calfed Bay-Delta*  
13 *Program, the Federal agencies shall seek to ensure, to the*  
14 *maximum extent practicable, that—*

15               (1) *all major aspects of implementing the Pro-*  
16 *gram are subjected to credible and objective scientific*  
17 *review; and*

18               (2) *major decisions are based upon the best*  
19 *available scientific information.*

20       (d) *GOVERNANCE.*—*In carrying out the Calfed Bay-*  
21 *Delta Program, the Secretary and the Federal agency heads*  
22 *shall undertake their activities in accordance with the terms*  
23 *of the Implementation Memorandum until such time as the*  
24 *Implementation Memorandum is replaced by approval of*  
25 *a permanent governing structure, whereupon the Secretary*  
26 *and agency heads shall undertake their activities in accord-*

1 *ance with the permanent governing structure. The Secretary*  
 2 *and the Federal agency heads shall work with their State*  
 3 *counterparts to develop a permanent governing structure*  
 4 *and shall seek congressional authorization and approval of*  
 5 *the permanent governing structure, as necessary.*

6 *(e) ENVIRONMENTAL JUSTICE.—Consistent with Exec-*  
 7 *utive Order 12898 pertaining to Federal Actions to Address*  
 8 *Environmental Justice in Minority and Low-Income Popu-*  
 9 *lations, it is the intent of the Congress that the Federal and*  
 10 *State agencies should continue to collaborate to develop a*  
 11 *comprehensive environmental justice workplan for the*  
 12 *Calfed Bay-Delta Program and fulfill the commitment to*  
 13 *addressing environmental justice challenges referred to in*  
 14 *the Calfed Bay-Delta Program Environmental Justice*  
 15 *Workplan dated December 13, 2000.*

16 **SEC. 5. REPORTING REQUIREMENTS.**

17 *(a) REPORT AND CERTIFICATION BY CALFED.—The*  
 18 *Secretary, in cooperation with the Governor, shall submit*  
 19 *a report of the Calfed Policy Group by December 15 of each*  
 20 *year to the appropriate authorizing and appropriating*  
 21 *Committees of the Senate and the House of Representatives*  
 22 *that describes the status of implementation of all compo-*  
 23 *nents of the Calfed Bay-Delta Program and that certifies*  
 24 *whether or not the Calfed Bay-Delta Program is progressing*  
 25 *in a balanced manner which allows all program compo-*

1 nents to be advanced, including additional water supply,  
 2 ecosystem restoration, and water quality. The Secretary's  
 3 report shall describe—

4 (1) the progress of the Calfed Bay-Delta Program  
 5 in meeting the implementation schedule for the Pro-  
 6 gram in a manner consistent with the Record of Deci-  
 7 sion;

8 (2) the status of implementation of all compo-  
 9 nents of the Calfed Bay-Delta Program;

10 (3) expenditures in the past fiscal year and year  
 11 to date for implementing the Calfed Bay-Delta Pro-  
 12 gram; and

13 (4) accomplishments in the past fiscal year and  
 14 year to date in achieving the objectives of additional  
 15 and improved—

16 (A) water storage;

17 (B) water quality;

18 (C) water use efficiency;

19 (D) ecosystem restoration;

20 (E) watershed management;

21 (F) levee system integrity;

22 (G) water transfers;

23 (H) water conveyance; and

24 (I) water supply reliability.

1 *The report shall discuss the status of Calfed Bay-Delta Pro-*  
 2 *gram goals, current schedules, and relevant financing agree-*  
 3 *ments.*

4       **(b) STATEMENT OF BALANCE.**—*Substantial progress*  
 5 *in each of the categories listed in subsection (a) shall be*  
 6 *considered in determining whether the Calfed Bay-Delta*  
 7 *Program is proceeding in a balanced manner for purposes*  
 8 *of making the certification provided for in subsection (a).*  
 9 *In addition, in making such certification the Secretary, in*  
 10 *cooperation with the Governor, shall prepare a statement*  
 11 *of whether the program is in balance which takes into con-*  
 12 *sideration the following—*

13               (1) *status of all Stage 1 actions, including goals,*  
 14               *schedules, and financing agreements;*

15               (2) *progress on storage projects, conveyance im-*  
 16               *provements, levee improvements, water quality*  
 17               *projects, and water use efficiency programs;*

18               (3) *completion of key projects and milestones*  
 19               *identified in the Ecosystem Restoration Program;*

20               (4) *development and implementation of local*  
 21               *programs for watershed conservation and restoration;*

22               (5) *progress in improving water supply reli-*  
 23               *ability and implementing the Environmental Water*  
 24               *Account;*

1           (6) *achievement of commitments under State and*  
 2       *Federal Endangered Species Acts;*

3           (7) *implementation of a comprehensive science*  
 4       *program;*

5           (8) *progress toward acquisition of the State and*  
 6       *Federal permits, including Clean Water Act section*  
 7       *404 permits, for implementation of projects in all*  
 8       *identified program areas;*

9           (9) *progress in achieving benefits in all geo-*  
 10      *graphic regions covered by the Program;*

11          (10) *legislative action on water transfer, ground-*  
 12       *water management, water use efficiency, and govern-*  
 13       *ance issues,*

14          (11) *status of complementary actions;*

15          (12) *status of mitigation measures; and*

16          (13) *revisions to funding commitments and pro-*  
 17       *gram responsibilities.*

18       (c) *REVISED SCHEDULE.—If the report provided for*  
 19       *in subsection (a) and the statement of balance provided for*  
 20       *in subsection (b) conclude that the Calfed Bay-Delta Pro-*  
 21       *gram is not progressing in a balanced manner so that no*  
 22       *certification of balanced implementation can be made, the*  
 23       *Calfed Policy Group shall prepare a revised schedule and*  
 24       *such other modifications, to ensure the Calfed Bay-Delta*  
 25       *Program will progress in a balanced manner consistent*

1 *with the intent of the Record of Decision. This revised sched-*  
 2 *ule shall be subject to approval by the Secretary and the*  
 3 *Governor, and upon such approval, shall be submitted to*  
 4 *the appropriate authorizing and appropriating Committees*  
 5 *of the Senate and the House of Representatives.*

6       (d) *FINANCIAL SUMMARY.—In addition to the report*  
 7 *required pursuant to subsection (a), no later than February*  
 8 *15 of each year the Secretary shall submit to the appro-*  
 9 *priate authorizing and appropriating committees of the*  
 10 *Senate and the House of Representatives a financial report*  
 11 *containing a detailed accounting of all funds received by*  
 12 *Federal and State agencies for implementing the Calfed*  
 13 *Bay-Delta Program in the previous fiscal year, a budget*  
 14 *for the proposed projects to be carried out in the upcoming*  
 15 *fiscal year with the Federal portion of funds authorized*  
 16 *under this Act, and a listing of all projects to be undertaken*  
 17 *in the upcoming fiscal year with the Federal portion of*  
 18 *funds authorized under this Act.*

19 **SEC. 6. CROSSCUT BUDGET AND AUTHORIZATION OF AP-**  
 20 **PROPRIATIONS.**

21       (a) *CROSSCUT BUDGET.—The President's Budget shall*  
 22 *include requests for the appropriate level of funding for each*  
 23 *of the Federal agencies to carry out its responsibilities*  
 24 *under the Calfed Bay-Delta Program. Such funds shall be*  
 25 *requested for the Federal agency with authority and pro-*

1 *grammatic responsibility for the obligation of such funds.*  
 2 *At the time of submission of the President's Budget to the*  
 3 *Congress, the Director of the Office of Management and*  
 4 *Budget shall submit to the appropriate authorizing and ap-*  
 5 *propriating committees of the Senate and the House of Rep-*  
 6 *resentatives an interagency budget crosscut report that dis-*  
 7 *plays the budget proposed for each of the Federal agencies*  
 8 *to carry out the Calfed Bay-Delta Program for the upcom-*  
 9 *ing fiscal year, separately showing funding requested under*  
 10 *both pre-existing authorities and under the new authorities*  
 11 *granted by this Act. The report shall also identify all ex-*  
 12 *penditures since 1996 within the Federal and State govern-*  
 13 *ments used to achieve the objectives of the Calfed Bay-Delta*  
 14 *Program.*

15       (b) *AUTHORIZATION OF APPROPRIATIONS.—There are*  
 16 *authorized to be appropriated to the Secretary and the*  
 17 *heads of the Federal agencies \$1,630,000,000 to pay the fed-*  
 18 *eral share of carrying out Stage 1 of the Record of Decision*  
 19 *for fiscal years 2003 through 2005, in accordance with the*  
 20 *provisions of this Act. The funds shall remain available*  
 21 *without fiscal year limitation.*

22 **SEC. 7. FEDERAL SHARE OF COSTS.**

23       *The federal share of the cost of implementing Stage 1*  
 24 *of the Calfed Bay-Delta Program as set forth in the Record*  
 25 *of Decision shall not exceed 33.3 percent.*



1 **SEC. 8. COMPLIANCE WITH STATE AND FEDERAL LAW.**

2       *Nothing in this Act preempts or otherwise affects any*  
3 *Federal or State law, including any authority of a federal*  
4 *agency to carry out activities related to, or in furtherance*  
5 *of, the Calfed Bay-Delta Program.*

**Calendar No. 436**

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1768**

**[Report No. 107-171]**

---

---

**A BILL**

To authorize the Secretary of the Interior to  
implement the Calfed Bay-Delta Program.

---

---

JUNE 24, 2002

Reported with an amendment